

LABOR SERVICES DIVISION[875]

Notice of Intended Action

**Proposing rule making related to beryllium standards
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 88.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 88.5 and 29 CFR 1953.5.

Purpose and Summary

The U.S. Department of Labor, Occupational Safety and Health Administration, (OSHA) published amendments to the general industry and construction standards concerning exposure to beryllium and beryllium compounds in January of 2017. The new standards are based on a finding that the previous exposure limits were too high to prevent occupational lung cancer and chronic beryllium disease.

Subsequently, federal OSHA twice published notices delaying implementation of the new beryllium standards. In the summer of 2017, federal OSHA formally proposed to revoke a portion of the new beryllium standards concerning construction. Federal OSHA also provided notification that it would not enforce those portions of the beryllium standards that are subject to revocation.

The Labor Commissioner published a Notice of Intended Action to adopt the new beryllium standards on April 26, 2017, as **ARC 3029C**. No further action was taken on that Notice.

Pursuant to both federal and state law, the Iowa Labor Commissioner must adopt the federal standards by reference. This Notice of Intended Action proposes to adopt by reference the general industry standards published by federal OSHA in January of 2017 and to adopt a new permissible exposure limit and a new short-term exposure limit for beryllium in the construction industry. This Notice is intended to make Iowa’s beryllium enforcement conform to federal beryllium enforcement.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, the Commissioner finds that jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 5.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commissioner no later than 4:30 p.m. on February 21, 2018. Comments should be directed to:

Kathleen Uehling
Division of Labor Services
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 21, 2018	150 Des Moines St.
10 a.m.	Des Moines, Iowa
	(If requested)

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should telephone 515.725.5615 and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:
82 Fed. Reg. 2735 (January 9, 2017)

ITEM 2. Adopt the following new rule 875—26.2(88):

875—26.2(88) Beryllium exposure limits. Effective May 2, 2018, the eight-hour time-weighted average permissible exposure limit for beryllium is 0.2 micrograms per cubic liter, and the short-term exposure limit for beryllium is 2.0 micrograms per cubic meter over a 15-minute sampling period.

This rule is intended to implement Iowa Code section 88.5.